6446

82-1889

Office-Supreme Court, U.S.
FILED
JUL 21 1983
ALEXANDER L. STEVAS,
CLERK

No.

In the Supreme Court of the United States

October Term, 1982

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a Political Subdivision of the Commonwealth of Pennsylvania; ROMAN, LOUIS A., Superintendent, Springfield Township School District; LAWN, JOHN J., HANSHAW, MARIE M., COMMINS, JAMES A., GORDEN, SARA LEE, HOCK, JR., WILLIAM C., HOGUE, JR., E. BURKE, KALISH, SALLY, LIEBERMAN, MAX L. and TORBIN, HARPUR M., Individually and as Members of the Board of School Directors, Springfield Township School District,

Petitioners

vs.

KNOLL, MADELIN H.,

Respondent

On Petition for a Writ of Certiorari to The United States Court of Appeals for the Third Circuit.

AMICI CURIAE BRIEF IN SUPPORT OF THE GRANT OF A WRIT OF CERTIORARI ON BEHALF OF PENNSYLVANIA, OHIO, RHODE ISLAND, NEW HAMPSHIRE, NORTH CAROLINA, HAWAII, WISCONSIN, KANSAS, LOUISIANA, NEBRASKA, INDIANA, ILLINOIS, MISSOURI AND WEST VIRGINIA

13pp

LeROY S. ZIMMERMAN
Attorney General
ANDREW S. GORDON
Deputy Attorney General
ALLEN C. WARSHAW
Deputy Attorney General
Chief, Special Litigation

Office of the Attorney General
1545 Strawberry Square
Harrisburg, PA 17120
(717) 783-1471
(Additional Counsel Listed Inside)

Murrelle Printing Co., Box 100, Sayre, Pa. 18840—(717) 888-2244

BEST AVAILABLE COPY

Additional Counsel:

Hon. Anthony Celebrezze
Atty. Gen. of Ohio
State Office Tower
30 East Broad Street
Columbus, Ohio 43215

Hon. Dennis J. Roberts II
Atty. Gen. of Rhode Island
72 Pine Street
Providence, Rhode Island
02903

Hon. Gregory H. Smith
Atty. Gen. of
New Hampshire
208 State House Annex
Concord, New Hampshire
03301

Hon. Rufus L. Edmisten
Atty. Gen. of
North Carolina
Department of Justice
P.O. Box 629
Raleigh, North Carolina
27602

Hon. Tany S. Hong
Atty. Gen. of Hawaii
State Capitol
Honolulu, Hawaii 96813

Hon. Bronson C. LaFollette
Atty. Gen. of Wisconsin
State Capitol Building
P.O. Box 7857
Madison, Wisconsin 53702

Hon. Robert T. Stephen
Atty. Gen. of Kansas
Judicial Center—
Second Floor
Topeka, Kansas 66612

Hon. William J. Guste, Jr.
Atty. Gen. of Louisiana
2-3-4 Loyola Building
New Orleans, Louisiana
70112

Hon. Paul L. Douglas
Atty. Gen. of Nebraska
State Capitol
Lincoln, Nebraska 68509

Hon. Linley E. Pearson
Atty. Gen. of Indiana
219 State House
Indianapolis, Indiana
46204

Hon. Neil Hartigan
Atty. Gen. of Illinois
500 South Second Street
Springfield, Illinois 62701

Hon. John D. Ashcroft
Atty. Gen. of Missouri
P.O. 899
Jefferson City, Missouri
65102

Hon. Chauncey H. Browning
Atty. Gen. of
West Virginia
State Capitol
Charleston, West Virginia
25305

TABLE OF CONTENTS

	PAGE
Interest of the Amici Curiae	1
Reasons for Granting the Writ:	
1. The decision below conflicts with the decision of other courts of appeals as to the suitability of applying to federal civil rights actions six-month statutes of limitations	3
2. This case involves an important question of federal law regarding application of state statutes of limitations to federal civil rights actions and conflicts with the decisions of this court	6
Conclusion	11

TABLE OF CITATIONS

CASES:

Board of Regents of the University of the State of New York v. Tomanio, 446 U.S. 478 (1980)	4, 6, 7, 9, 10
Burns v. Sullivan, 619 F.2d 99 (1st Cir. 1980)	5
Campbell v. Haverhill, 155 U.S. 610 (1895)	7
Carter v. Supermarkets General Corp., 684 F.2d 187 (1st Cir. 1982)	5
Chase Securities Corp. v. Donaldson, 325 U.S. 304 (1945)	7
Dewey v. University of New Hampshire, 694 F.2d 1 (1st Cir. 1982)	5

Green v. Ten Eyck, 572 F.2d 1233 (1978) 5
Holden v. Massachusetts Commission Against Discrimination, 671 F.2d 30 (1st Cir.), cert. denied 103 S.Ct. 97 (1982) 5
Hussey v. Sullivan, 651 F.2d 74 (1st Cir. 1981) 5
Johnson v. Railway Express Agency, Inc., 421 U.S. 454 (1975) 4, 7
Robertson v. Wegmann, 436 U.S. 584 (1978) 9, 10
Swyka v. Johnson, 649 F.2d 675 (1983), petition for cert. filed, No. 82-1928 (May 19, 1983) 8
Warren v. Norman Realty Co., 513 F.2d 730, cert. denied 423 U.S. 855 (1975) 5

STATUTES:

Ariz. Rev. Stat. Ann. Sec. 41.1481 1
Colo. Rev. Stat. Sec. 24-34504 1
Conn. Gen. Stat. Sec. 46a-82 1
Del. Code Ann. tit. 6 Sec. 4605 1
Fla. Stat. Ann. Sec. 23-167 1
Ga. Code Ann. Sec. 89-1714 2
Hawaii Rev. Stat. Sec. 378-4 2
Ill. Rev. Stat. ch. 68 Sec. 7-102 and 103 2
Ind. Code Ann. Sec. 34-4-16.5-7 2
Iowa Code Ann. Sec. 601 A. 15(12) 2
Kan. Stat. Ann. Sec. 44-1004 and 1005 2
Ky. Rev Stat. Sec. 344.200 2
Mass. Gen. Laws Ann. ch. 151B Sec. 5 ..... 2, 5
Me. Rev. Stat. Ann. tit. 5 Sec. 4611 2
Mich. Stat. Ann. Sec. 3.548 (601) II(b) 2

Minn. Stat. Ann. Sec. 363.06 2
Mo. Ann. Stat. Sec. 213.120 ..... 2, 6
Mont. Code Ann. Sec. 49-2-501 2
Neb. Rev. Stat. Sec. 20-119 ..... 2, 6
Nev. Rev. Stat. Sec. 613.430 2
N.H. Rev. Stat. Ann. Sec. 354-A:09 2
N.J. Rev. Stat. Sec. 10:5-18 2
N.M. Stat. Ann. Sec. 28-1-10 2
Ohio Rev. Code Ann. Sec. 4112.05 2
Oka. Stat. Ann. tit. 25 Sec. 1501 2
42 Pa. Cons. Stat. Sec. 5522(b) 4
R.I. Gen. Laws Sec. 28-6-10 2
S.C. Code Ann. Sec. 65-2D(1) 2
S.D. Codified Laws Sec. 20-13-31 2
Tenn. Code Ann. 4-21-117 2
42 U.S.C. Section 1981 10
42 U.S.C. Section 1982 10
42 U.S.C. Section 1983 ..... 1, 9, 10
42 U.S.C. Section 1985 10
42 U.S.C. Section 1988 ..... 1, 4, 7, 8
42 U.S.C. Section 2000e-5(e) 8, 9
42 U.S.C. Section 3610(b) 9
Utah Code Ann. 34-35-7(15) 2
Va. Code Sec. 36-94 2
W.Va. Code Sec. 5-11-10 2
Wyo. Stat. Sec. 27-9-106 2

INTEREST OF THE AMICI CURIAE

This case presents the question whether a federal court properly may reject application of a state statute of limitations, which it is required to borrow for purposes of a civil rights action, because the court determines that the limitations period is too short. The decision of the court of appeals in this case, refusing to apply Pennsylvania's six-month statute of limitations to an employment discrimination claim brought pursuant to 42 U.S.C. §1983, will have a broad impact on the states joining in this brief.

The states, their officers and employes are, perhaps, the most frequent defendants in federal civil rights actions. Although the civil rights statutes represent a strong federal policy to encourage vindication of civil rights, Congress likewise has expressed the firm view that certain interstices in the civil rights scheme, including the prescription of limitations periods, are to be filled by application of state law. See 42 U.S.C. §1988. The *amici* have a substantial interest in the vindication of their responsibility and power to choose generally applicable limitations for actions.

The Third Circuit's decision here, if permitted to stand, will have a considerable effect on *amici*. In addition to the Pennsylvania statute at issue here, there are statutes of limitations from at least 32 States[1] which are

[1] *See* ARIZ. REV. STAT. ANN. §41.1481 (six-month limitation; employment discrimination); COLO. REV. STAT. §24-34504 (90-day limitation; housing discrimination); CONN. GEN. STAT. §46a-82 (six-month limitation; employment discrimination); DEL. CODE ANN. tit. 6 §4605 (six-month limitation; housing discrimination); FLA. STAT. ANN. §23.167 (six-month limitation; em-

less than one year and which could be applied to civil rights actions. With respect to each of these statutes, the State has made a carefully considered policy choice in

---

ployment discrimination); GA. CODE ANN. §89-1714 (six-month limitation; employment discrimination); HAWAII REV. STAT. §378-4 (90-day limitation; discrimination action); ILL. REV. STAT. ch. 68 §7-102 and 103 (180-day limitation; civil rights violation); IND. CODE ANN. §34-4-16.5-7 (180-day limitation; political subdivision claim); IOWA CODE ANN. §601 A. 15(12) (180-day limitation; employment discrimination); KAN. STAT. ANN. §44-1004 and 1005 (six-month limitation; employment discrimination); KY. REV. STAT. §344.200 (six-month limitation; employment discrimination); ME. REV. STAT. ANN. tit. 5 §4611 (six-month limitation; employment discrimination); MASS. GEN. LAWS ANN. ch. 151B §5 (six-month limitation; employment discrimination); MICH. STAT. ANN. §3.548 (601) II(b) (90-day limitation; employment discrimination); MINN. STAT. ANN. §363.06 (six-month limitation; employment discrimination); MO. ANN. STAT. §213.120 (180-day limitation, housing discrimination); MONT. CODE ANN. §49-2-501 (six-month limitation; employment discrimination); NEB. REV. STAT. §20-119 (six-month limitation; housing discrimination); NEV. REV. STAT. §613.430 (six-month limitation; employment discrimination); N.H. REV. STAT. ANN. §354-A:09 (90-day limitation; discrimination action); N.J. REV. STAT. §10:5-18 (six-month limitation; discrimination); N.M. STAT. ANN. §28-1-10 (90-day limitation; discrimination action); OHIO REV. CODE ANN. §4112.05 (six-month limitation; discrimination action); OKA. STAT. ANN. tit. 25 §1501 (six-month limitation; discrimination action); R.I. GEN. LAWS §28-6-10 (four-month limitation; employment discrimination); S.D. CODIFIED LAWS §20-13-31 (180-day limitation; discrimination action); TENN. CODE ANN. 4-21-117 (180-day limitation; discrimination action); UTAH CODE ANN. 34-35-7(15) (30-day limitation; discrimination action); VA. CODE §36-94 (180-day limitation; housing discrimination); W. VA. CODE §5-11-10 (90-day limitation; discrimination action); WYO. STAT. §27-9-106 (90-day limitation; employment discrimination).

balancing the interests of potential plaintiffs and defendants. The Third Circuit's decision here undermines the States' ability to exercise the discretion afforded them by Congress to make these policy choices. For that reason, *amici* have a substantial interest in the resolution of this case.

REASONS FOR GRANTING THE WRIT

1. The Decision Below Conflicts With the Decision of Other Courts of Appeals as to the Suitability of Applying to Federal Civil Rights Actions Six-Month Statutes of Limitations

Section 1988 of Title 42 provides, in pertinent part, that federal courts adjudicating civil rights claims shall refer to state law "when federal law provides no rule of decision." *Board of Regents of the University of the State of New York v. Tomanio*, 446 U.S. 478, 484 (1980) (hereinafter *"Tomanio"*). Because the civil rights statutes have no statutes of limitations, state law supplies the rule of decision. Under Section 1988, state law may be disregarded only if it is "inconsistent with the Constitution and laws of the United States", or if it is "inconsistent with the federal policy underlying the cause of action under consideration." *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 465 (1975).

Pennsylvania law prescribes a six-month statute of limitations for actions brought against state and local government officials.[2] 42 Pa. Cons. Stat. §5522(b). In reliance upon what it perceived to be the "remedial spirit"

[2] 42 Pa. Cons. Stat. §5522(b) provides as follows:

Commencement of Action Required.—The following actions and proceedings must be commenced within six months:

(1) An action against an officer of any government unit for anything done in the execution of his office, except an action subject to another limitation specified in this sub-chapter.

of the civil rights statutes, the Third Circuit concluded here that six months simply is too short a time period in which to expect the average plaintiff to realize the import of the action taken against him and to file a lawsuit. In reaching its decision, the Third Circuit ignored decisions of the First and Eighth Circuits upholding application of six-month limitations periods to civil rights claims.

In *Burns v. Sullivan*, 619 F.2d 99 (1st Cir. 1980), the court of appeals applied Massachusetts' six-month limitation to a civil rights race discrimination claim. The First Circuit found the six-month period to be reasonable. "Although it may take more than six months to properly prepare a civil rights case, a complaint meeting the requirement of Fed. R. Civ. P. 8(a) can surely be filed in that time. And amendments to the complaint and supplemental pleadings may be sought after suit is brought. Fed. R. Civ. P. 15." *Id.*, at 106. The court also emphasized the "important policy reasons" which support using the limitations applicable to similar actions in state court; a longer limitations period for federal actions would encourage initial resort to federal court thereby further involving the federal courts in local matters. *Ibid.* The First Circuit consistently has followed *Burns*. *See. e.g. Hussey v. Sullivan*, 651 F.2d 74 (1st Cir. 1981); *Holden v. Massachusetts Commission Against Discrimination*, 671 F.2d 30 (1st Cir.), *cert. denied*, 103 S.Ct. 97 (1982); *Carter v. Supermarkets General Corp.*, 684 F.2d 187 (1st Cir. 1982); *Dewey v. University of New Hampshire*, 694 F.2d 1 (1st Cir. 1982).

Similarly, the Eighth Circuit in *Warren v. Norman Realty Co.*, 513 F.2d 730, *cert. denied*, 423 U.S. 855 (1975) and *Green v. Ten Eyck*, 572 F.2d 1233 (1978), applied to federal civil rights claims challenging local

housing practices 180-day limitations imposed by Nebraska's and Missouri's fair housing laws.[3]

The Third Circuit here chose not to acknowledge the decisions cited above or to canvass the important state policies reflected in Pennsylvania's statute of limitations. Instead, the court substituted its own judgment for that of the state legislature as to what limitations period is fair and reasonable. Because this decision conflicts with decisions of the First and Eighth Circuits, certiorari should be granted to review the judgment below.

---

2. This Case Involves an Important Question of Federal Law Regarding Application of State Statutes of Limitations to Federal Civil Rights Actions and Conflicts With the Decisions of This Court

---

As Judge Adams observed in his dissent from the denial of rehearing: "There is no indication that the opinion in the present case follows Tomanio's direction to give weight to the significant policies underlying the state statute of limitations" (Pet. App. 34a; 699 F.2d, at 147). The Third Circuit's failure properly to apply the *Tomanio* test justifies this Court's review.

The teaching of *Tomanio* is that, in civil rights actions, "state statute[s] of limitations . . . are more than a technical obstacle to be circumvented if possible. In most cases, they are binding rules of law." 446 U.S. at 484.

[3] Although no other courts of appeals have addressed this question, as we noted earlier (see *note* 1, *supra*), at least 33 States have statutes of limitations of less than one year which, arguably, could be applied to a civil rights action.

Only if the policies underlying the state limitations period are inconsistent with the federal policies reflected in the civil rights statute may the state statute be ignored. 446 U.S. at 487. In this case the Third Circuit erred in failing even to consider the policies on which the state statute is based.

Statutes of limitations are inherently arbitrary in that they involve "a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting prosecution of stale ones." *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 463-464 (1975). *See also Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945). The borrowing provisions of 42 U.S.C. §1988 reflect a congressional judgment to "rely on the State's wisdom in setting a limit" on the time for bringing an analogous action. 421 U.S., at 464. Generally, a state statute of limitations which does not discriminate against federal rights and which gives the party a reasonable time to sue must be applied. *Campbell v. Haverhill*, 155 U.S. 610, 615-616 (1895).

Pennsylvania's six-month limitation period for claims against public officials fosters important state policies beyond those reflected in limitations statutes generally. State and local governments are more likely to experience frequent changes in personnel than are other entities. The almost constant flux in which government finds itself exacerbates the problems of assembling evidence to defend claims. Even a short passage of time often will result in the departure from government of persons with knowledge of the circumstances surrounding the claim. Frequently, upon leaving government, former officials are less than

cooperative in assisting the defense. Moreover, the large volume of business and transactions handled by the government often creates serious problems in keeping track of and assembling documents necessary to defend in litigation. These considerations provide additional justification in the context of this case for respecting the state's choice.[4]

As petitioners have noted (Pet. 14-15), the policies which support shorter limitations periods for actions against public officials are particularly compelling when the claim involves discrimination in public employment. Every time a government agency fires, fails to promote or refuses to hire a person, someone else fills the position. The passage of time makes it increasingly difficult for the agency to reverse its course if a court decides that the agency violated the civil rights statutes by virtue of its personnel decision. In fact, Congress itself explicitly recognized this problem and prescribed a 180-day limitations period for employment discrimination actions. See 42 U.S.C. §2000e-5 (e).[5]

When balanced against the federal policies which underlie the civil rights statutes, it is clear that the state policies in no way conflict with the federal aims. The

[4] In light of the strong policies which support the state's choice of a six-month limitation, it is particularly ironic that the court of appeals held that a six-year limitation period applies to civil rights actions (Pet. App. 15a; 699 F.2d at 145). That holding clearly flies in the face of the presumption, created by Section 1988, that the states may be relied upon to make these policy choices.

[5] The Third Circuit has not limited its holding to employment discrimination actions or any other categories of cases. *See Swyka v. Johnson*, 699 F.2d 675 (1983), *petition for cert. filed*, No. 82-1928 (May 19, 1983).

"principal policies embodied in §1983 [are] deterrence and compensation." *Tomanio*, 446 U.S., at 488. It is difficult to see how these policies are significantly affected by Pennsylvania's statute. Claims can be readily enforced, compensation may be received, and deterrence fostered if an action is filed within six months.

The court of appeals' conclusion (Pet. App. 10a; 669 F.2d at 142) that six months simply is too short a time in which to file a claim is unsupported by any evidence in the case at hand or empirical data derived from other cases. Certainly Congress did not believe that 180 days inherently is too short a time in which to require that action be taken to commence civil rights proceedings. *See* 42 U.S.C. §2000e-5 (e) (employment discrimination); 42 U.S.C. §3610 (b) (housing discrimination). In light of the general proliferation of civil rights actions and the substantial litigation in the employment area in particular it can hardly be argued persuasively that the average person needs more than six months to file an action.

The court of appeals also relied upon what it found as a federal policy, implicit in §1983, to favor vindication of individual rights (Pet. App. 11a; 699 F.2d, at 143). Once again, the statute at issue here has no direct impact on that policy. If the Third Circuit is concerned that some rights will not be vindicated because the statute will bar the claim, it is sufficient to note that "a state statute cannot be considered 'inconsistent' with federal law merely because the statute causes the plaintiff to lose the litigation." *Robertson v. Wegmann*, 436 U.S. 584, 593 (1978).

The court of appeals also relied upon what it considered to be a congressional policy of uniformity (Pet. App. 10a-11a; 699 F.2d, at 143-144). The court found

this policy to be undermined by the possibility that one limitations period would apply to public officials under 42 U.S.C. §§1983 and 1985, while a different limitations period applied to private defendants sued under 42 U.S.C. §§1981, 1982 and 1985. Once again, the court ignored this Court's teachings.

As the Court observed in *Tomanio*, the claim that federal policy requires uniformity in application of limitations statutes to civil rights claims consistently has been rejected. "The need for uniformity, while paramount under some federal statutory schemes, has not been held to warrant the displacement of state statutes of limitations for civil rights actions." 446 U.S., at 489. Congressional reliance on state law obviously presupposes the lack of nationwide uniformity. *Robertson v. Wegmann, supra,* 436 U.S., at 594, n.11. The same rationale applies here. If Congress had no difficuty with the application of varying limitations for the very same cause of action brought in different states, it is unreasonable to suggest that federal policy is substantially affected by the application of different limitations to different causes of action brought in the same forum.

In the final analysis, there is no substantial basis in this case to reject out of hand the state's considered judgment that claims against public officials must be commenced promptly. The federal policies of compensation for civil rights violations and deterrence of future misconduct are not affected in the sightest by application of Pennsylvania's six-month statute of limitations.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the decision of the Third Circuit.

Respectfully submitted,

LEROY S. ZIMMERMAN
Attorney General
BY: ANDREW S. GORDON
Deputy Attorney General
ALLEN C. WARSHAW
Deputy Attorney General
Chief, Special Litigation

Office of Attorney General
1545 Strawberry Square
Harrisburg, PA 17120
(717) 783-1471

Date: June 6, 1983